



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, MNDL-S, MNDCL

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, for damage to the rental unit and for compensation under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 21 minutes. The two landlords, female landlord ("landlord") and "male landlord," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### Preliminary Issue – Service of Landlords' Application

The landlord testified that the tenant was served with the landlords' notice of hearing, respondent instructions, and landlord-tenant fact sheet by way of email on October 18, 2020, as per a substituted service decision, dated October 23, 2020, made by an Adjudicator ("SS decision").

The landlord stated that she did not serve the tenant with the landlords' application for dispute resolution. She said that she forgot to do so. She claimed that she told the tenant about the application verbally over the phone.

I find that the landlords did not serve the tenant with their application for dispute resolution, as required by section 89 of the *Act*. I find that the tenant did not have notice of the landlord's application.

Further, the landlords claimed to have served the tenant on October 18, 2020, with their notice of hearing, instructions, and fact sheet, 5 days prior to being given approval by the Adjudicator to serve via email, as the SS decision was dated October 23, 2020.

The tenant did not appear at this hearing to confirm receipt of the landlords' application documents. Accordingly, I find that the landlords failed to prove service in accordance with section 89 of the *Act* and the tenant was not served with the landlords' application.

At the hearing, I informed the landlords that I was dismissing their application with leave to reapply. I notified them that they could file a new application and pay a new filing fee, if they wished to pursue this matter further. The landlords confirmed their understanding of same.

I informed the landlords that they would have to prove service at the next hearing, including specific evidence regarding the date and method for service of the application and any evidence. They claimed that the tenant was living in the United States and they could not find him. I cautioned them about using the same substituted service decision to email application documents to the tenants, given that the decision was made on October 23, 2020 and it may not be relevant in a future application. The landlords confirmed their understanding of same.

I informed the landlords that they could hire a lawyer to obtain legal advice after the hearing. They stated that they had spoken to a lawyer prior to this hearing. I notified them that they could contact the Provincial Court of British Columbia regarding service and enforcement of monetary orders. The landlords confirmed their understanding of same.

### Conclusion

The landlords' entire application is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 28, 2021

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Residential Tenancy Branch